

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DANIEL A JACOBSEN**  
Claimant

**APPEAL NO. 11A-UI-05592-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURKE MARKETING CORPORATION**  
Employer

**OC: 03/27/11  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated April 18, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 18, 2011. The claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Daniel Jacobsen.

**ISSUES:**

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures food products. The claimant was hired on May 25, 2009, as a full-time factory worker. The claimant began developing back pain and was diagnosed with what he called "muscular problems" and fibromyalgia. He was required to leave work on June 28, 2010. The claimant was released to return to work on October 4, 2010. After returning to work, he broke his foot. He was off work again until March 16, 2011.

The claimant attempted to return to work but was unable to tolerate the work because of ongoing problems with his back. He asked his employer about light duty and none was available. The claimant did not feel he could continue working and quit his job on March 29, 2011.

The claimant is looking for work and has applied at Wal-Mart and a local animal hospital. He believes that he could stock shelves and do retail work. The job at the animal hospital was for cleaning cages and the claimant felt he could do that work as well. He is 45 years old and has a

GED. His prior work history is primarily factory or production work. He has been accepted to participate in vocational rehabilitation.

### **REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

One of the most difficult issues in unemployment insurance law is eligibility for unemployment insurance benefits when there has been a medically related separation of employment. When an individual voluntarily quits his or her employment without good cause attributable to the employer, then benefits are not awarded. The analysis focuses on which party initiated the separation of employment. If the claimant initiates the separation of employment, then no benefits are awarded unless good cause is attributable to the employer. When an individual leaves his or her employment for medical reasons, the analysis is more nuanced and requires special attention to the reasons for the resignation.

In this case, the claimant made the decision to leave his job because he could not perform the work required due to ongoing back pain. The claimant asked his employer for light-duty work and the employer had none available. The claimant believed that he could do other work.

The administrative law judge has carefully reviewed all of the administrative rules and concludes that most applicable is 871 IAC 24.26(6)b. Although the claimant's back condition was not caused by the employment, "factors and circumstances directly connected with employment" aggravated the claimant's condition and "made it impossible for the employee to continue in employment because of serious danger to the employee's health...." The rule goes on to state that if these circumstances are present, the law deems the separation to be an involuntary termination of employment and constitutes good cause attributable to the employer. Since the claimant was unable to work for the employer because he could not do the physical work required of a factory worker, his separation is deemed involuntary. Benefits are allowed.

The next issue is whether the claimant is able and available for employment.

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The evidence established that the claimant is actively looking for work. He believes that he could do retail work and stocking shelves. He also applied for a job with an animal hospital. He is mentally and physically able to work in some gainful employment. The claimant is therefore able and available for work.

**DECISION:**

The representative's decision dated April 18, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw